

Marsh v. Marsh

Transcription of Findings and Ruling of hearing held on 5.14.2019
with Judge Michael Edwards

Trial scheduled for August 15th and 16th

Judge Edwards: The Court has carefully considered this matter and the wellbeing of the parties' minor children is paramount to the Court. In reviewing this case, Utah Rule of Civil Procedure 108, it requires a number of different things. Subsection (f) – the Judge will make independent Findings of Fact and Conclusions of Law based on the evidence whether by proffer or testimony or exhibit, etc. I am proceeding based on proffer as I understand it. Utah Rule 42(b): “The Court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or any number of claims, cross claims, counterclaims, third party claims, or issues.” The key words are “in furtherance of convenience or to avoid prejudice.”

It is clear that in about July 2017, Respondent was arrested for commission of Federal crimes and was convicted of those crimes and incarcerated from those crimes in November 2017. Sometime in the latter part of 2017 or so, Petitioner relocated to be with family here in Utah after being alone the East coast there and the Respondent remained incarcerated in Cumberland, Maryland. In June of 2018, Petitioner filed a Petition for Divorce and as counsel mentioned, the hearing on the Motion to Bifurcate has been heard a couple of times. The first time was in November of 2018 and that was denied by Commissioner Wilson. The Motion was renewed this year and that was heard in March and that's actually why we are here. March 18, 2019, Commissioner Wilson heard this Motion to Bifurcate and denied that Motion. Other facts that I think are pertinent and I think perhaps most importantly for the Court's decision, given the prior Temporary Orders that were entered and the fact that the Court has a trial set in about three months from now, the Court finds that the decision on the Motion to Bifurcate really doesn't implicate child-related issues directly. In other words, temporary orders considering the children have been entered by the Court and final orders will be entered by the Court after the trial in August so this Motion to Bifurcate is really a separate issue from the issue of what is really in the children's best interest. So the Court has to dig a little deeper for what is best and perhaps rather what is in furtherance of convenience or to avoid prejudice. I will find that by his actions being incarcerated in a Federal Prison, the Respondent has placed himself, the Petitioner and their children in a situation that is inherently stressful. Thus while he would like to have the entry of the decree of divorce delayed until the trial of the matter, the Court finds that his opinion to the matter is somewhat reduced by virtue of the fact that he is where is by virtue of his own choice and his criminal actions. The Court also finds that the Petitioner has provided credible evidence that she is being prevented in moving forward in her life with dating and other things related to dating that she cannot carry forward with because of her moral religious values or beliefs because she is married. Thus it would be a convenience to her and would avoid and reduce prejudice to her in this divorce matter if the Court were to grant the Motion to Bifurcate the divorce. In the end, I think that's what this hinges on, the Petitioner would like to have the bifurcation done so that she can move forward with her life. Respondent wants to delay the

divorce decree being entered because of whatever reasons he might have. Perhaps that he hopes the divorce won't happen or whatever the case may be. Again, my finding is that because the parties are where they are due to his criminal action, his opinion on the matter is reduced in importance to the Court based on those findings. The Court turns then to the case law that really helps the Court analyze this issue. As I reviewed the case law submitted by counsel, the Appellate Courts in reviewing these decisions of trial Courts or trial Judges like myself are doing that using an abusive discretion standard which means that unless the judge in question uses his or her discretion in making the decision, the Court appeals won't disturb that decision. And so you see the Court of Appeals upholding decisions to grant and to deny motions to bifurcate. Of all the cases that have been submitted to the Court, the Court found *Park v. Parker*, specifically paragraph 8, and the *Parker* Court refers to the case of *Curran v. Curran* (Pennsylvania Court), but the language was specifically stated in the *Parker v. Parker* decision, it says "the severance of the divorce and economic claims ensures that the parties' personal lives will not be held hostage to economic disputes." The Court finds that verbiage helpful in this case, because by analogy the Court concludes that Petitioner's personal life is being held hostage by the pendency of this divorce which involves issues with custody, parent time and financial decisions related to those issues. Based upon that, the Court concludes that though it is a close decision and I am not being critical of Commissioner Wilson's decision, the Court concludes that it is my best judgment based upon the facts that I found that it is in the furtherance of the convenience of the Petitioner and to avoid further prejudice to her where this divorce matter has been pending for 11 months or so, and the parties have been separated coming up on two years because of Respondent's arrest, the Court finds that in the interest of justice, the Motion to Bifurcate should be granted and the Court will proceed to enter Findings and Conclusions and a Decree of Divorce consistent with my Ruling. I do find as an additional Finding of Fact in support of my ruling that under Rule 108c, the parties essentially stipulated that I consider the new evidence of the Petitioner receiving mailings about lawsuits. I would find even after the Stipulation that was appropriate because from what I have been told, those mailings have been coming since her Affidavit was submitted. So it's appropriate for me to hear that new evidence today. I think that the fact that she is having stress added to her, the Court isn't ruling on any viability of the claims against the Petitioner because of Respondent's actions, those may or may not have any legal validity, but I do find that the fact of the matter is this increases her stress and anxiousness in this matter and it's a further reason to support the Court's making the close decision as to whether or not bifurcation and entry of decree of divorce is appropriate. Of course, I need to make it clear that as prior temporary orders as it relates to the children will be left in place and the current pending issue about Respondent's summer parent time is not affected by this ruling and of course, any issues not already resolved which I think essentially all other issues other than the entry of the decree of divorce are still open for trial for the two dates that have been set in August. That's the ruling of the Court.